IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.299 OF 1996.

Maharashtra State Road Transport
Corporation : Appellants.

versus

Smt.Rakhi Chandrakant Khairwadkar
& ors. : Respondents.

Mr.G.S.Hegde for the appellant.
Mr.Uday Warunjikar for Respondent Nos.1 to 4.

CORAM : D.G.DESHPANDE,J.

DATED : 11th March 2005.

ORAL ORDER

1. Heard Mr.Hegde for the appellant and Mr.Warunjikar for the respondents. Husband of claimant No.1 and father of other claimants died in a motor accident which took place in the following manner as stated by the wife (PW 1) - Rakhi. According to her, three days prior to 18.6.92 she had gone to Pune to see her husband

who was working there. On 18.6.1992 both of them boarded a bus at Pune for coming to Bombay. The bus came to Panvel S.T.Stand and both - the wife and husband got down to have a tea. It was 2.00 in the afternoon. She further states that the driver and conductor were in the bus and without informing them the driver took the bus in reverse and her husband came under the wheel of bus. The driver did not give alarm while taking the bus in reverse.

2. This story of claimant No.1 - wife is totally in contradiction to the story put forth by in the evidence of the conductor and the driver.

. The driver is examined as witness No.1 for the Opponent. He has stated that at about 2 ‘O" clock his bus reached Panvel. He parked the bus at a platform of bus stand for Thane. He went to the controller for making entry. He asked the conductor to see all the passengers should get down the bus as he wants to fill diesel in the vehicle from the depot. Thereafter he carried the vehicle in the workshop; filled the diesel and, thereafter, he took out the bus

out of the area of workshop in reverse direction. The conductor was whistling. When his bus came up in front of the gate of workshop, he heard commotion to the right side. He stopped the bus; get down and found that the husband of Appellant No.1 was crushed under the bus.

. Similar story is given by the conductor - Witness No.2 for the opponent. He has stated that when the bus was parked at the platform for Thane, all the passengers got down and, the driver carried the bus to the depot for filling diesel. He went there lateron. After filling the diesel, the driver told him that he would take the vehicle in reverse. He then started giving whistle. Meanwhile a bus for going to Bombay came, he went ahead to stop that bus. One passenger tried to board the bus and came below the rear wheel of the bus. He was run over by the S.T.

3. From the account of accident that is given by the driver and the conductor, the accident took place near the gate of the depot and just by the side of speed breaker. The panchanama shows that the accident took place

near the speed breaker and, therefore, the panchanama corroborates the testimony of the driver and the conductor.

4. In this background, Mr.Hegde appearing for the appellant, strenuously urged that looking to the spot of accident and the manner in which the accident occurred, it could not be said that the driver of the bus was negligence. He contended that if the accident, as proved, has occurred near the gate of the depot, then there was no reason for the deceased passenger to come near the depot or near the gate. He was supposed to stand near the platform where the bus was going to reach. He also contended that if the conduct was in the bus and he was whistling while the bus was being taken in reverse, then the wife could have alerted her husband. But the fact that the husband came under the wheel of the bus clearly indicates that he was trying to boar the bus in motion and, therefore, he slept down from the bus and this could not be because of the negligence of driver.

5. As against this, Mr.Warunjikar appearing for the claimants contended that Claimant No.1 -

the wife has not admitted that she was standing at the platform. What she has stated is that she and her husband standing behind the S.T. bus in the bus stand. But the driver and the conductor were there in the bus and without informing them i.e. the wife and her husband, the driver took the bus in reverse and her husband came under the wheel of the bus. Only one witness to prove the manner in which the accident took place was examined on behalf of the claimants and, it appears that the appellant No.1 - the wife is not telling whole truth to the Court.

6. It is true that her husband died because of running over by the bus. It is also true the driver was driving the bus and taking the bus in reverse and, the accident took place in the area of the appellant. But it appears to be a case of contributory negligence. There seems to be some justification in the submissions of Mr.Hegde that the deceased must have tried to board the bus while it was in motion and he slipped down and came under the wheel of the bus. The statement of the conductor in his evidence that while he was giving whistling a bust for going to Bombay came there and he went ahead to stop that bus

and, at that time one passenger tried to boar the bus came under the rear wheel of the bus, shows that the attention of the conductor was diverted at that particular time. He was involved in stopping the bus which came there for going to Bombay and when he was giving signal to that bus, the accident took place. Admittedly, at that time there was nobody in the bus to sound the whistle for the driver. This is, therefore, a case of contributory negligence and, in my opinion, the contribution of the deceased for this negligence is 30% and that of the driver is 70%.

7. So far as quantum of amount of the compensation is concerned, the deceased was cook. He was skilled worker; he was doing that job since 1970; he was serving in a prestigious institution. His basic salary at the relevant time was Rs.3,500/-; he was getting other perks and, therefore, his salary could be taken as Rs.4000/-. The tribunal accepted monthly dependency at Rs.3000/- and, looking to the age of the deceased at the time of accident i.e. 40 years, applied multiplier of 16. Mr.Hegde for the appellant contended that if the Court has

accepted salary at Rs.3323/- as per the salary sleep, after deducting 1/3rd, would come to about Rs.2200/-. According to him, applying multiplier of 16 was not proper and, at the most multiplier of 8 to 10 should have been applied.

8. Mr.Warunjikar for the respondents contended that Schedule II to Section 163 of the Motor Vehicles Act lays down that multiplier of 16 could be applied to where the age of the victim is between 35 to 40. However, this Schedule is for general guidance and, in my opinion, multiplier of 14 would be proper in the circumstances. However, the monthly dependency of Rs.3000/- appears to be justified because of the age and experience of the deceased and his possibilities as future promotion and chances of earning More. Therefore, Rs.3000x12x14 = Rs.5,04,000/-. Out of this amount, after deducting 30% i.e. Rs.1,51,200/- towards the negligence of deceased, the respondents will be entitled for Rs.3,52,800/-.

9. The tribunal has also awarded Rs.20,000/- and Rs.5,000/- towards consortium and funeral respectively. Looking the age of the wife and

minor children and, also looking to the age of the deceased, the tribunal is justified in awarding the said amount of Rs.20,000/- and Rs.5,000/- towards consortium and funeral respectively. Therefore, the respondents are entitled to get total amount of Rs.3,52,800+20,000+5,000 = Rs.3,77,800/-. In view of this, the appeal is required to be allowed partly. Hence I pass the following order:-

:ORDER:

The appeal is partly allowed.

The order of the tribunal awarding compensation of Rs.6,16,000/- is modified and the respondents will be entitled to get an amount of Rs.3,77,800/- with interest at the rate of 9%.

No order as to costs.

The respondents will be entitled to withdraw the amount as per the aforesaid calculations and, the appellant can

withdraw the rest of the amount.

[D.G.DESHPANDE]

11/03/2005 JUDGE.